

FEDERAL CIRCUIT COURT OF AUSTRALIA

IMSEEH v MINISTER FOR HOME AFFAIRS & ANOR [2020] FCCA 420

Catchwords:

MIGRATION – *Migration Act 1958* (Cth) – Partner visa application – application for judicial review of decision of Administrative Appeals Tribunal which affirmed a decision of the Delegate of the Minister for Immigration refusing to grant to the applicant a Partner (Residence) (Class BS) (Subclass 801) visa – Administrative Appeals Tribunal found applicant and sponsor not to be in a genuine spousal relationship – applicant claims that the Administrative Appeals Tribunal was unreasonable and that he and the sponsor were not able to meaningfully participate at the hearing before it – no jurisdictional error established – application for judicial review dismissed.

Legislation:

Migration Act 1958 (Cth), ss.5F, 65, 359A
Migration Regulations 1994 (Cth)

Cases cited:

AAJ17 v Minister for Immigration and Border Protection [2018] FCA 205
Minister for Immigration & Multicultural & Indigenous Affairs v SGLB (2004) 207 ALR 12
Re Refugee Review Tribunal; Ex parte H (2001) 179 ALR 425
SZBYR v Minister for Immigration and Citizenship (2007) 235 ALR 609
SZCOS v Minister for Immigration and Citizenship [2008] FCA 570

Applicant:	RAMZI MICHEL NU'MAN IMSEEH
First Respondent:	MINISTER FOR HOME AFFAIRS
Second Respondent:	ADMINISTRATIVE APPEALS TRIBUNAL
File Number:	SYG 2565 of 2018
Judgment of:	Judge Dowdy
Hearing date:	5 February 2020
Delivered at:	Sydney

Delivered on:

5 February 2020

REPRESENTATION

The Applicant appeared in person.

Counsel for the First Respondent: Mr A. Gardner

Solicitors for the First Respondent: Minter Ellison

THE ORDERS OF THE COURT ARE AS FOLLOWS:

- (1) The Application filed in this Court on 12 September 2018 is dismissed.
- (2) The Applicant is to pay the First Respondent's costs of the proceeding in the sum of \$5,600.
- (3) Pursuant to Rule 36.03(b) of the *Federal Court Rules 2011* (Cth) the Applicants have up to and including 25 March 2020 to file any Notice of Appeal from orders 1 and 2 above in the Federal Court of Australia.
- (4)

FEDERAL CIRCUIT COURT

OF AUSTRALIA

AT SYDNEY

SYG 2565 of 2018

RAMZI MICHEL NU'MAN IMSEEH

Applicant

And

MINISTER FOR HOME AFFAIRS

First Respondent

ADMINISTRATIVE APPEALS TRIBUNAL

Second Respondent

REASONS FOR JUDGMENT

EX TEMPORE

(Revised from Transcript)

Introduction

1. The Applicant is a male citizen of Jordan aged 47 years.
2. By Application filed in this Court on 12 September 2018 he seeks to quash and have re-determined in accordance with law a decision of the Second Respondent, the Administrative Appeals Tribunal (**Tribunal**), dated 29 August 2018 affirming the decision of the Delegate (**Delegate**) of the First Respondent, the Minister for Home Affairs (**Minister**), dated 19 January 2017 refusing to grant to him a Partner

(Residence) (Class BS) (Subclass 801) visa (**permanent Partner visa**) under s.65 of the *Migration Act 1958* (Cth) (**the Act**).

Background

3. The Applicant first came to Australia on a Prospective Marriage (Subclass 300) visa on 27 January 2013. On 3 May 2013 he lodged a combined application for a Partner (Temporary) (Class UK) (Subclass 820) visa (**temporary Partner visa**) and the permanent Partner visa on the basis of being in a spousal relationship with an Australian citizen whom he had married on 9 March 2013, namely Ms Rhoda Michael (**sponsor**) who had been born in Australia on 18 March 1977.
4. I note that the grant of a Partner visa comprises a two stage process because the effect of cl.801.221(1) of the *Migration Regulations 1994* (Cth) (**Regulations**) is to prescribe that at time of decision for the permanent Partner visa the relevant applicant is already the holder of a temporary Partner visa which, in fact, in this case had been granted to the Applicant on 31 May 2013.

Statutory Provisions for the Grant of a Partner Visa

5. As at 29 August 2018 the Applicant had to satisfy cl.801.221 of Sch.2 to the Regulations. Relevantly cl.801.221(1) and (2) provided as follows:

801.221

- (1) *The applicant meets the requirements of subclause (2), (2A), (3), (4), (5), (6) or (8).*
- (2) *An applicant meets the requirements of this subclause if:*
 - (a) *the applicant is the holder of a Subclass 820 visa; and*
 - (b) *the applicant continues to be sponsored for the grant of the Subclass 820 (Partner) visa by:*
 - (i) *the sponsoring partner; or*
 - (ii) *the Australian citizen, Australian permanent resident or eligible New Zealand citizen who sponsored the applicant for that visa; and*

- (c) *the applicant is the spouse or de facto partner of the sponsoring partner; and*
- (d) *subject to subclauses (6A) and (7), at least 2 years have passed since the application was made.*

6. Further, as at the date of application the Applicant had to satisfy the definition of “spouse” contained in s.5F of the Act, which relevantly provided as follows:

5F Spouse

- (1) *For the purposes of this Act, a person is the spouse of another person if, under subsection (2), the 2 persons are in a married relationship.*
- (2) *For the purposes of subsection (1), persons are in a married relationship if:*
 - (a) *they are married to each other under a marriage that is valid for the purposes of this Act; and*
 - (b) *they have a mutual commitment to a shared life as husband and wife to the exclusion of all others; and*
 - (c) *the relationship between them is genuine and continuing; and*
 - (d) *they:*
 - (i) *live together; or*
 - (ii) *do not live separately and apart on a permanent basis.*
- (3) *The regulations may make provision in relation to the determination of whether one or more of the conditions in paragraphs (2)(a), (b), (c) and (d) exist. The regulations may make different provision in relation to the determination for different purposes whether one or more of those conditions exist.*

7. For the purposes of s.5F(3) of the Act, reg.1.15A of the Regulations made “*provision in relation to the determination of whether one or more of the conditions in paragraphs (2)(a), (b), (c) and (d) exist.*”. That regulation provided at the relevant time as follows:

1.15A Spouse

(1) For subsection 5F(3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F(2)(1), (b), (c) and (d) of the Act exist.

(2) If the Minister is considering an application for:

- (a) a Partner (Migrant) (Class BC) visa; or*
- (b) a Partner (Provisional) (Class UF) visa; or*
- (c) a Partner (Residence) (Class BS) visa; or*
- (d) a Partner (Temporary) (Class UK) visa;*

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

(3) The matters for subregulation (2) are:

- (a) the financial aspects of the relationship, including:*
 - (i) any joint ownership of real estate or other major assets; and*
 - (ii) any joint liabilities; and*
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and*
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and*
 - (v) the basis of any sharing of day to day household expenses; and*
- (b) the nature of the household, including:*
 - (i) any joint responsibility for the care and support of children; and*
 - (ii) the living arrangements of the persons; and*
 - (iii) any sharing of the responsibility for housework; and*

- (c) *the social aspects of the relationship, including:*
 - (i) *whether the persons represent themselves to other people as being married to each other; and*
 - (ii) *the opinion of the persons' friends and acquaintances about the nature of the relationship; and*
 - (iii) *any basis on which the persons plan and undertake joint social activities; and*
 - (d) *the nature of the persons' commitment to each other, including:*
 - (i) *the duration of the relationship; and*
 - (ii) *the length of time during which the persons have lived together; and*
 - (iii) *the degree of companionship and emotional support that the persons draw from each other; and*
 - (iv) *whether the persons see the relationship as a long term one.*
- (4) *If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).*

Decision of Delegate

8. By letter dated 10 October 2016 the Department of the Minister (**Department**) requested that the Applicant provide further information in support of his permanent Partner visa application, such as:
- a) bank account statements of the sponsor and himself;
 - b) details of living arrangements;
 - c) employment details; and
 - d) purchase documents with the sponsor.

- e) On 31 October 2016 the Applicant responded by providing to the Department a considerable volume of documents.
9. In the result, the Delegate refused to grant the permanent Partner visa to the Applicant on the following basis:

Summary

I have considered the four prescribed matters as detailed above as well as other information held on file.

You and your sponsor have stated that your relationship began in 2009 and have been residing for over two years. There is no information to show the progress of your relationship or that your joint financial resources have been directed to support each other, your household, or your well-being as spouses. The claims you have made about the financial aspects of your relationship, the nature of your commitment of your relationship, and the nature of your household lack detail and have not been supported by any supporting documentation. In addition, it is unclear whether you and your sponsor present yourselves publically as a married couple and are recognised by others as such.

Based on my assessment of all the information before me, I am not satisfied that you are in a genuine and continuing relationship with your sponsor.

Decision

As clause 801.221 of the Regulations is not met by the applicant, I find the criteria for the grant of a Partner (Residence) (Class BS) (Subclass 801) visa are not met by the applicant.

Therefore, I refuse the application by the applicant for a Partner (Residence) (Class BS) (Subclass 801) visa.

Decision of Tribunal

10. The Applicant lodged an application for merits review with the Tribunal on 1 February 2017 through his registered migration agent and gave a copy of the Decision Record of the Delegate to the Tribunal at the same time.
11. On 19 December 2017 the Tribunal requested the provision of further information in support of the Partner visa application in relation to:

- a) the financial aspects of the claimed spousal relationship;
- b) the nature of the household of the Applicant and the sponsor;
- c) social aspects of the relationship between the Applicant and the sponsor;
- d) the nature of their commitment to each other; and
- e) the information and matters required to be considered by reg.1.15A of the Regulations.

12. The Tribunal also gave examples of information and documentation that could be supplied, including:

- a) evidence of living together;
- b) evidence of marriage-related events;
- c) birth certificates; and
- d) evidence of the financial aspect of the relationship.

13. By letter dated 9 January 2018, the migration agent of the Applicant responded to the Tribunal by a submission and with the provision of a volume of supporting documentation.

14. Then on 9 April 2018 the Applicant attended a hearing before the Tribunal at which he, the sponsor and the sponsor's father gave evidence with the aid of an Arabic interpreter and with the registered migration agent being present in attendance.

15. After the hearing the Tribunal sent a letter to the Applicant dated 11 April 2018, purportedly being a letter pursuant to s.359A of the Act (**s.359A letter**) in relation to certain perceived inconsistencies between evidence given at the Tribunal hearing by the Applicant, the sponsor and the sponsor's father. I use the expression “*purportedly*” because, on the face of the matter, the letter did not need to be sent because the existence of doubts, inconsistencies or the absence of evidence is not a matter that is generally required to be given by the Tribunal to an applicant: *SZBYR v Minister for Immigration and Citizenship* (2007) 235 ALR 609 at 616 [18] per Gleeson CJ, Gummow, Callinan, Heydon

and Crennan JJ. However, the fact that the Tribunal apparently believed in this case that s.359A of the Act applied to the inconsistencies referred to in the s.359A letter is immaterial and does not constitute jurisdictional error.

16. The Applicant's migration agent responded by a submission dated 11 May 2018 and the provision of a further volume of documentation which included medical evidence relating to the sponsor, being:
 - a) medical certificates dated 15 February 2017 and 2 February 2018 provided to Centrelink relating to the sponsor (with the medical certificate dated 2 February 2018 referring to a temporary condition of the sponsor with symptoms of "*anxiety, poor sleep, poor concentration, overthinking*"); and
 - b) a medical report dated 19 April 2018 concerning the sponsor's treatment for breast cancer since July 2014.

c) **(sponsor's medical evidence).**

17. The migration agent asserted in his submission dated 11 May 2018 that both the Applicant and the sponsor had been extremely nervous and thus could not provide coherent responses at the Tribunal hearing.
18. At [13] of its Decision Record the Tribunal summarised the documents provided to it by the Applicant, including the sponsor's medical evidence. Then at [16] the Tribunal summarised the inconsistencies which it perceived in the evidence given at the Tribunal hearing between the Applicant, the sponsor and the sponsor's father. Rather than summarising the inconsistencies perceived by the Tribunal, it is more convenient to set out [16] in full:

[16] There were a number of inconsistencies in the evidence given at the time of hearing and these inconsistencies were put to the parties following the hearing in accordance with section 359A of the Act. The Tribunal explained the relevance and the consequences of relying on that information. The discrepancies were as follows:

- *At the time of hearing the sponsor said her father owned the house where they lived. She said that they did not pay rent but that she pays the water and electricity. She said she pays the full amount of the bills which are in her parent's name.*

She said that she pays out of the joint account and she pays the accounts at the post office. This was not consistent with the evidence given by the applicant that he and the sponsor do not pay rent and they make a contribution by buying the groceries and sometimes they contribute to the payment of the bills. This was not consistent with the evidence given by the father of the sponsor who said the applicant and the sponsor pay him \$100 per week as their share of the rent and they generally pays it on a Sunday in cash. He said his daughter pays the utility bills. She pays at the post office.

- *At the time of hearing the sponsor said she was presently not working and that she had been on new start as a jobseeker since 21 March 2015. She said prior to that she had worked at a blind factory. She said in addition to newstart she received a family allowance payment of \$296 per fortnight and she receives \$16 per fortnight in child support. This was not consistent with the evidence given by the applicant that the sponsor does not work and that she last worked six or seven months ago. He said her last work had been at a bakery working on a computer but it was not the bakery that .he works for. He initially said the sponsor was not in receipt of any income but then retracted that statement and said she gets a Centrelink income but · he didn't know on what basis she was paid, he thought it may be that she was unemployed and looking for work. He said she did not receive child support payments.*
- *At the time of hearing the sponsor said that the applicant worked on a casual basis for three days a week as a cleaner in a bakery. She said it was called Industry Bakery and it was at Moorebank. She said he worked from 8 am to 4 pm three days a week and that he was employed for 15 hours a week. When pointed out to her that 8am to 4 pm three days a week does not equate to 15 hours the sponsor revised her evidence to say he worked 24 hours per week and for that work he was paid \$327 per week. She said that amount was electronically deposited into their joint account. She said that was the only work he had done since he arrived in Australia. This was not consistent with the evidence the applicant gave at hearing that he worked as a cleaner in a bakery on a casual^o basis three days a week. He said that the days can change and they just ring him on the morning f the day they want him to work. He said he worked 15 hours per week from 8am to 4 pm and for that work he was paid \$327 net. His pay is deposited into an account in his name*

only and the sponsor has a card on that account. He said he had been working at the bakery for 2.5 years. Prior to working at the bakery he said he did some work for his brother kitchen painting. He said he did that for the first 6 to 7 months after he came to Australia. He then worked for his brother-in-law for one year cleaning cars.

- *At the hearing the sponsor told the Tribunal that she, the applicant and her son had celebrated the orthodox Easter with the applicant's brother and his family the day before the hearing. This was inconsistent with the evidence the applicant gave that he and the sponsor had attended the celebrations at his brother's home but the sponsor's son did not go as he wanted to stay home and play on his PlayStation. This evidence was not consistent with the evidence given by the father of the sponsor who said the applicant worked on the Sunday before the hearing and the family all had lunch together. He said he, his wife, his daughter, her son and their other son Mark ate lunch together. They ate chicken and rice. The applicant told the Tribunal he and the sponsor had chicken and rice together the previous evening.*
- *The sponsor told the Tribunal the sister of the applicant Lucy lives at Bossley Park and she and the applicant see her monthly. She said Lucy had three sons and a daughter and she and the applicant had attended the wedding of the daughter. The boys are not married but one son has a partner. This was not consistent with the evidence the applicant gave at the time of hearing that the son and _daughter of his sister Lucy were married and they had married prior to his coming to Australia so neither he nor the sponsor attended their weddings.*
- *The sponsor told the Tribunal the engagement party for her and the applicant was in Jordan and 200 people attended. This was not consistent with the evidence the applicant gave at hearing that about 400 people attended the engagement party in Jordan.*
- *The sponsor told the Tribunal she and the applicant had been married at Toongabbie Church which was the church her parents attended. There were 400 guests at their wedding and the reception was at the Cafe Siena in Wetherill Park. This was not consistent with the evidence the applicant gave at hearing that about 500 people attended*

their wedding and he was not able to say where the reception had been held.

- *The sponsor told the Tribunal she and the applicant spent their wedding night at a Novotel hotel in the city but she did not know which one. This was not consistent with the evidence the applicant gave at the hearing that he and the sponsor had spent their wedding night at home.*

19. At [17] of its Decision Record the Tribunal noted that it had given the Applicant an opportunity to address the perceived inconsistencies (i.e. by the s.359A letter) and that it had taken the submissions of the migration agent of 11 May 2018 into account.

20. Then at [18] – [19] of its Decision Record the Tribunal found adversely in relation to the demeanour of the Applicant at the hearing, stating:

[18] The evidence given by the visa applicant at the time of hearing was confused, conflicting and unconvincing. The Tribunal was concerned the visa applicant frequently sought to adjust his answers and sought wherever possible to evade giving an answer especially when the questions pertained to the party's daily routines or finances. The Tribunal did not consider it plausible that he could fail to remember pertinent details about whether the son of the sponsor had been with them the day prior to the hearing, where they spent their wedding night and where their wedding reception was held. The Tribunal was concerned the answers the visa applicant gave were deliberately vague in an attempt to not disclose any information he considered may be prejudicial to his claim. The lack of knowledge and the frequent shifting of evidence displayed by the visa applicant were not consistent with relationship the parties claimed to have. Whilst it is appreciated Tribunal proceedings can be very difficult for parties and this stress can of itself lead to some inconsistencies in the evidence given, the Tribunal is not satisfied the explanations given are sufficient to overcome the cumulative effect of the inconsistencies.

[19] The cumulative effect of the inconsistencies coupled with the evasiveness of the visa applicant was such that the Tribunal did not consider him to be a credible witness. The Tribunal does not place significant weight on his evidence unless it is corroborated by reliable evidence from other sources.

21. Then at [23], [38], [39] and [40] of its Decision Record the Tribunal referred to and considered other inconsistencies in the evidence of the

Applicant, as well as confused and unconvincing evidence, and concluded at [45] – [47] as follows:

[45] Upon considering the overall evidence before me and on the basis of the findings I have made I am not satisfied the applicant has established he is currently living in a genuine and committed spousal relationship with the sponsor.

[46] Given these findings the Tribunal, on balance, is not satisfied that at the time of this decision the parties are in a spousal relationship.

[47] Therefore the applicant does not meet cl.801.221(2)(c).

22. In the result, the Tribunal affirmed the decision of the Delegate to refuse to grant the permanent Partner visa to the Applicant.

Grounds of Attack on Tribunal decision in this Court

23. The Grounds relied upon by the Applicant are verbatim as follows:

- 1. The Tribunal refused our application based on some inconsistencies. The Tribunal had sufficient evidence about our relationship yet failed to take into account the medical investigations carried out on the sponsor and the medical certificate provided which should lead the Tribunal to accept that any inconsistencies are the result of the medical condition of the sponsor as well as the simplicity of the visa applicant who was confused by the type of questions asked.*
- 2. The Tribunal decision is not reasonable especially the failure to consider that I entered Australia on subclass 300 on 27 January 2013 and married immediately on 9 March 2013 and since that date both have been committed and have lived together and continue to live together and there is no adverse information against our relationship which is supported by family.*
- 3. The Tribunal comment that we do not live together is incorrect and the Tribunal Member acted as policeman and both we did not feel comfortable with her interview.*
- 4. We will provide transcript of the hearing.*

Consideration

Ground 1

24. First, the Tribunal specifically identified the medical evidence relating to the sponsor at bullet points 8, 9, 17 and 18 at [13] of its Decision Record. None of that medical evidence supported any contention that the sponsor was disabled from meaningfully participating at the hearing.

25. It is the case that many people suffer from anxiety and depression, but those conditions in themselves do not disable a person from meaningfully participating in either an administrative hearing or a Court hearing. Such hearings are in themselves regularly conducive to nervousness in all of the participants, including parties, witnesses and sometimes even Counsel. In *Minister for Immigration & Multicultural & Indigenous Affairs v SGLB* (2004) 207 ALR 12 at 49–50 [126] Callinan J said as follows:

[126] This should also be said about stressed witnesses. They are by no means rarely encountered in courts and tribunals. Legal and inquisitorial proceedings can be very stressful occasions even for people who have no direct interest in their outcome. That a witness or a party may be stressed will rarely of itself constitute sufficient reason to postpone a hearing. Whether a party or a witness is so stressed as to be unable to give a reasonable account of himself or herself, or whether further inquiries as to the capacity of a person to do so should be made, is pre-eminently a matter for the court or the tribunal to decide, and courts and tribunals by experience are generally well equipped to do so.

26. Further, in the last sentence of [18] of its Decision Record the Tribunal stated that it was not satisfied that the difficulty and stress of the Tribunal hearing overcame “*the cumulative effect of the inconsistencies*” which it had found.

27. Second, the Tribunal was entitled to take into account inconsistencies which were not minor or trivial in assessing credibility. In this connection, in *AAJ17 v Minister for Immigration and Border Protection* [2018] FCA 205 the Tribunal in its decision had pointed to a number of inconsistencies in important aspects of the applicant’s claims as made at various times and between her accounts and those

given by her husband at an earlier Tribunal hearing. The Tribunal also considered that the applicant's answers were evasive and vague when those inconsistencies were put to her. In that context, Perry J said at [24]:

[24] The existence of such inconsistencies in important aspects of the appellant's claims, and the failure to explain those inconsistencies in a way that the Tribunal considered was satisfactory, provide a logical and rational basis for the Tribunal's adverse credibility findings. In this regard, it is well established that the Tribunal is not required to accept, uncritically, any and all claims made by an applicant: Randhawa v Minister for Immigration, Local Government and Ethnic Affairs (1994) 52 FCR 437 at 451–452 (Beaumont J); Minister for Immigration & Ethnic Affairs v Guo (1997) 191 CLR 559 at 596 (Kirby J). Nor does the Tribunal have to possess rebutting evidence before holding that a particular assertion is not established: see eg Selvadurai v Minister for Immigration & Ethnic Affairs (1994) 34 ALD 347 at [7] (Heerey J).

28. Finally, the central issue in this case related to whether the Applicant and the sponsor were in a spousal relationship and that depended necessarily to an extent on the demeanour of the witnesses, which the Tribunal was entitled to take into account: see *Re Refugee Review Tribunal; Ex parte H* (2001) 179 ALR 425 at 436 [34] per Gleeson CJ, Gaudron and Gummow JJ. The Tribunal's reliance on the inconsistencies which it found and the demeanour of the Applicant was not legally unreasonable and did not lack a logical, rational or probative basis. As Bennett J said in *SZCOS v Minister for Immigration and Citizenship* [2008] FCA 570 at [18]:

[18] The Tribunal was entitled to have regard to and base findings on the appellant's demeanour while giving evidence (Re Refugee Review Tribunal; Ex parte H (2001) 179 ALR 425 at [34]; W148/00A v Minister for Immigration & Multicultural Affairs (2001) 185 ALR 703 at [64]). However, in assessing the appellant's credibility, the Tribunal's findings were not made on demeanour alone. The Tribunal assessed the appellant's claims and made findings on credibility that it explained; based on its observation of the appellant, the way he presented his claims, the lack of consistency that it discerned in the claims made and what it found to be implausible. Those were findings of fact for the Tribunal.

29. Ground 1 fails to establish jurisdictional error.

Ground 2

30. This Ground, in substance, merely argues with the Tribunal's finding at [45] of its Decision Record that it was not satisfied that the Applicant had "*established he is currently living in a genuine and committed spousal relationship with the sponsor*". However, a merits review of the Tribunal's decision is not available in this Court.
31. Accordingly, Ground 2 is not made out.

Ground 3

32. In fact at [30] and [32] of its Decision Record the Tribunal did accept that the Applicant and the sponsor had resided together at their present address since the Applicant had arrived in Australia from Jordan and resided as part of one household. However, the Tribunal was not satisfied that they were living in a spousal relationship, as required by cl.801.221(2)(c) of the Regulations, stating at [42] as follows:

[42] On the evidence before the Tribunal the Tribunal is not satisfied the applicant and her sponsor provide one another with companionship and emotional support, or that they see the relationship as long-term. While the Tribunal acknowledges the parties reside at the same address the Tribunal is not satisfied they live together as a couple.

33. Once again, Ground 3 in effect argues with the merits of the Tribunal's decision. Further, there is no evidence that the Tribunal member acted as "*a policeman*".
34. At the hearing, the Applicant first informed me that he did not wish to read and rely upon the affidavit of Mr Sarkis affirmed on 26 October 2018, which annexed a transcript of the Tribunal hearing on 9 April 2018. After the Applicant had finished his oral submissions Mr Gardner, who appeared for the Minister, informed me in his role as a lawyer for a model litigant that in fact the Applicant had given to him before the case commenced a Written Submission, which had not in fact been given to the Court. The Applicant then handed up the Written Submission which, inconsistently with his earlier indication that he did not wish to rely on the transcript of the Tribunal hearing, asked the Court to pay attention to that transcript.

35. In those circumstances I admitted the transcript of the Tribunal hearing (which Mr Gardner accepted as correct) into evidence, but informed the Applicant at the same time that I was not prepared to simply generally read the 59 pages of the transcript and that he must take me to any pages or passages which he relied upon for his assertion that the Tribunal member acted in the role of “*a policeman*”.
36. The Applicant was not able to point to any such portions and, in those circumstances, I asked Mr Gardner whether he had read the transcript and, if so, whether he could inform me in his role as lawyer for a model litigant, whether there was any tendency in the transcript of the Tribunal hearing to indicate that the Tribunal member acted as “*a policeman*”, which expression I asked him to take as referring to abusive, overbearing, unfair or unreasonable conduct of the Tribunal member towards the witnesses at the Tribunal hearing. To this Mr Gardner responded that he had indeed read the transcript and that there was nothing therein which indicated that the Tribunal member had acted in any improper, overbearing or unfair way.
37. In relation to the claim by the Applicant that the medical condition of the sponsor somehow impacted on her ability to give evidence at the Tribunal hearing, I did read for myself the sponsor’s questioning by the Tribunal member, appearing in the transcript between pages 28 to 51.
38. That transcript reveals that the Tribunal member asked questions which appeared to be relevant to the issues before her and that the sponsor answered the questions in a responsive and meaningful way. The transcript is inconsistent with any thought or suggestion that the sponsor was unable, by reason of any health condition, to meaningfully participate in the Tribunal hearing.
39. Finally in relation to the transcript, it was said orally by the Applicant in reply that he objected to the Tribunal member asking questions relating to what he had for dinner on the preceding Saturday night. Such a question was asked, as recorded at transcript page 21 at line 21 of the Applicant and at page 46 at line 23 of the sponsor. However, such a question, in a hearing concerning whether or not the Applicant and the sponsor were truly in a spousal relationship has obvious relevance and was in no way improper or unreasonable.

40. In my view, Ground 3 fails to establish that the decision of the Tribunal is affected by jurisdictional error.

Ground 4

41. This is not a cognisable ground of judicial review. The Applicant made good his statement that he would provide a transcript of the Tribunal hearing to the Court and I have dealt with that above.

Conclusion

42. The Applicant has failed to establish that the decision of the Tribunal is affected by jurisdictional error and the Application filed in this Court is to be dismissed.

I certify that the preceding forty (40) paragraphs are a true copy of the reasons for judgment of Judge Dowdy

Associate:

Date: 26 February 2020